

**REMARKS**

Claims 1 to 9, 11 to 15, 17 to 19, 21, 23 to 32, 35 to 39, 41 to 43, 46 and 48 are pending, of which Claims 1, 11, 21, 24, 35 and 46 are independent. Claims 1 to 9, 11 to 15, 17 to 19, 21, 23 to 32, 35 to 39, 41 to 43, 46 and 48 are amended, and Claims 10, 16, 20, 22, 33, 34, 40, 44, 45 and 47 are cancelled without prejudice or disclaimer of the subject matter. Reconsideration and further examination are respectfully requested. No new matter has been added by the present amendments.

The Office Action refers to "whereby" wording used in the claims, and contends that the wording does not require a step to be performed or limit a claim to a particular structure, and does not limit the scope of the claims. The Office Action refers to MPEP § 2106 II(C). Without conceding the correctness of the remarks made in the Office Action, the claims have been amended to remove this word.

The Applicant acknowledges the Examiner's return of initialed copies of the PTO-SB08 with the Office Action, which confirm that the art cited in the Information Disclosure Statement (IDS) dated January 16, 2007 has been considered by the Examiner.

In connection with the Examiner's request related to that IDS, Attachment A is hereby submitted which categorizes the references cited in the January 16, 2007 IDS, which were previously cited in co-pending patent applications of applicant. An abstract is provided for each application, along with an identification of the references cited in relation thereto.

The Office Action rejects Claims 1 to 48 as allegedly being directed to non-statutory subject matter. The Office Action alleges that Claims 1 and 24 recite a method which can be implemented in software, Claims 11 and 35 recite a system which can be implemented in software, Claims 21 and 48 recite a user interface which is a program that can be implemented in software, and contends that a computer program without the computer readable medium needed to realize the computer program's functionality is nonstatutory functional descriptive material. Without conceding the correctness of the rejection in any way, Applicant amends Claims 1 and 24 to recite a method executable by at least one server, amends Claims 11 and 35 to recite a system comprising at least one server performing the claimed selection program, and amends Claims 21 to 46 to recite a system comprising at least one server configured to provide the

recited rating tool and playlist generator. Reconsideration and withdrawal of the § 101 rejection are respectfully requested.

Claims 1 to 12, 15, 17 to 36, 39 and 41 to 48 are rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,557,042 (He), and Claims 13, 14, 16, 37, 38 and 40 are rejected under 35 U.S.C. § 103(a) over He. Applicants respectfully traverse the rejection and submit the following remarks in support thereof.

By way of a non-limiting example and in accordance with one or more embodiments, data streams are broadcast over the network in the form of a personalized Internet radio station, the data streams that are broadcast are selected based on user preferences by a selection process, which selection process is influenced by input received from the user but limits user control over the selection in order to prevent on-demand broadcast of data streams to the user.

Turning to the specific language of the claims, Claim 1 recites a method executable by at least one server in communication with a user computer for selecting data streams for broadcast over a computer network to the user computer in the form of a personalized internet radio station, the comprises steps of accessing a database of data streams by the at least one server; selecting at least one data stream from the database according to a selection method performed by the at least one server to create a playlist of data streams, the selection method performed by the at least one server being influenced by input received from the user that comprises user preferences for data streams to be broadcast but not controlled by the user's input so as to prevent on-demand broadcast of data streams to the user; transmitting the at least one selected data stream to the user computer via the network; receiving feedback via the network at the at least one server, the feedback expressing a preference of the user regarding the transmitted at least one data stream; and updating the selection method using the preference of the user. The updated selection method performed by the at least one server biases selection of data streams to be experienced at the user computer in accordance with the user preference and limits the user's control over selection of particular data streams from the database to prevent on-demand broadcast of data streams.

He describes an ultimate on-demand system which permits the user to play multimedia content in its entirety and/or permits the user to play "the most interesting" portions of the multimedia content. According to He, user input identifying the most interesting portions of the

multimedia is used to select the portions of the multimedia to use as a summary of the multimedia content. Figure 5 of He cited in the Office Action shows a user interface by which the user views the multimedia content in screens 304 to 308, and if the user wishes to view a summary of the multimedia content, the user activates Summary button 326. In response to the user's activation of the Summary button 326, He displays portions of the multimedia content judged by the users to be the most interesting. He's on-demand system focuses on permitting the user to elect whether to view multimedia content in its entirety or to view portions of the multimedia content as a summary, which portions are identified from user input as the most interesting portions of the multimedia content, which is much different from the invention presently claimed in Claim 1, in which user input influences but does not control selection, and/or which recites a selection method which limits the user's control over selection of particular data streams to prevent on-demand broadcast of data streams.

In view of the foregoing, since He is missing multiples elements recited in Claim 1, He cannot provide the basis of a § 102(e) rejection, or a §103(a) rejection. Furthermore and for at least the foregoing reasons, Claim 1, and the claims that depend from Claim 1, are believed to be in condition for allowance. Claims 11, 21, 24, 35 and 46, and the claims that depend from Claims 11, 21, 24, 35 and 46, are also believed to be in condition for allowance for at least the same reasons.

In addition to the elements not taught, suggested or described by He identified above, He fails to teach, suggest or disclose the selection performed in Claims 24, 35 and 46, which takes into account user input indicating one or more data streams that are to be excluded from being selected for transmission to the user. The Office Action relies on the description in He, which allows a user to use button 330 of Figure 5 to identify that a portion of the multimedia content viewed by the user is not important. This feature of He, however, does not exclude the multimedia segment from being selected for transmission to the user computer, since button 330 is limited in its use to the multimedia content summary, and any segment of the multimedia content identified using button 330 remains a part of the multimedia content itself.

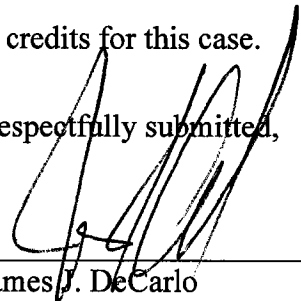
Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for

allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 32361.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,



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